

## REMARKS

In the non-final Office Action mailed October 6, 2009, the Examiner brought to the Applicant's attention the fact that the substitute specification that was submitted on 12/01/2008 contained new matter, and that the new matter was required to be cancelled in reply to the Office Action mailed October 6, 2009. Applicant is tendering herewith a new Substitute Specification in which all of the new matter identified by the Examiner has been removed, and the Applicant notes again for the Examiner that only new section headings rearrangement of previously presented specification paragraphs, and the addition of the original language of claims 6-12 as originally filed with the application on August 31, 2004, which have been renumbered as paragraphs 1 through 7, which original claims were suggested be added to the specification by the Examiner. Again, Applicant's counsel makes a confident affirmative statement that under 37 C.F.R. §1.125(b) that this Substitute Specification now includes no new matter.

Claims 6-7, and 9-10 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, by reason of the recitation of the phrase "stable distribution" in these claims. In addition, claims 6-10 and 12 have been rejected under 35 U.S.C. § 1.12, second paragraph, as claim 6 recites a "stable distribution" which renders the claim indefinite. In addition, the phrase "the cheese particles" appear in the claims with insufficient antecedent basis. By the foregoing proposed amendments to the claims, the Applicant believes that he has addressed all of the grounds for rejecting the claims under 35 U.S.C. § 1.12(1) and (2).

Claims 6-10 and 12 have also been rejected under 35 U.S.C. §103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Doerr et al. (DE 211709 English Abstract only), Hans Drexel (DE 10065633 A1), Garderlander (EP 0505797 A),

Ranken, and Mally (US4716821). For the reasons that follow, Applicant traverses these new grounds for rejecting the claims of the present application as being unpatentably obvious under 35 U.

The Examiner cites a new reference, namely the Doerr et al. As it is understood from its English abstract, the gist of this patent is to reduce the energy content of sausages, with the advantage that MCC replaces part of the fat without any loss of the sensory quality. This provides comparative benefits, as far as the intended purpose is concerned, when compared to fibrous cellulose or dry MCC. It is also easily understood that the Doerr et al. invention concerns the preparation of a first, stand-alone intermediate product, comprised of sausage mass, 5-15% microcrystalline cellulose and 1-40 (5-20) % oil or fat, which is subsequently added into sausages. Preparation of the intermediate product presupposes milling of the separate components under intense shear conditions, therefore possibly implying the use of a homogenizer (intense mixer), rather than a bowl chopper. The Doerr et al. patent, as it is understood from the English abstract, also discourages the person of ordinary skill to use dry MCC, possibly implying that dry MCC added directly in the bowl chopper does not lead to the quality characteristics sought. Neither the intended purpose of the present application, nor the technological challenges faced, nor the combination of the individual process steps that lead to the unexpected result of the present application, are dealt with or taught in Doerr et al.

As Applicant understands from the English abstract, Doerr et al. teaches the development of a cellulose containing emulsion, comprising of microcrystalline cellulose (<15%), sausage mass and oil or fat. Fatty or oily mouth feel can be described as a combination of several basic parameters, such as viscosity (thickness, body, fullness), lubricity (creaminess, smoothness), absorption/adsorption (physiological effect on taste buds). Certain forms of cellulose have been

used as a bulking agent, which can be substituted for fat. The MCC, in other words, mimics many of the rheological properties associated with full oil emulsions. The fully dispersed colloidal MCC, will also impart suspension in a variety of products, practically providing a physical barrier preventing the dispersed substance from coalescence. The development of the colloidal network provided by the MCC, as implied by the Doerr et al. inventors, as well as the reduction in size of the oil globules, requires intense shear conditions, as clearly implied by the inventors of Doerr et al.

By direct contrast, the present application teaches the use of a dietary fiber in general, not particularly dealing with the special functional properties of a cellulose, namely the microcrystalline cellulose that imparts certain special fat-mimicking effects, under certain processing conditions. The intended purpose of Doerr et al. would not be served when very small amounts of MCC were used in the presence of a considerable amount of oil. On the other hand, the use of a 20% oil or fat, contradicts the intended purpose of Doerr et al., which is to produce a product with low caloric content. Doerr et al. does not teach the average skilled person on how to obtain a stable incorporation of oil and feta cheese pieces into minced meat-based products.

On the other hand, Domazakis (WO 02/065860) teaches the production of a meat emulsion-based product, comprising oil, soy proteins, milk proteins, phosphates and starch. Moreover, the resulting product of Domazakis is encased. By contrast, the present application teaches the production of a coarsely comminuted meat-based product, in which feta cheese pieces and oil are stably incorporated, i.e., oil does not coalesce into large oil droplets, nor does it migrate towards the surface of the product, a phenomenon called exudation. As also explained in previous Amendments in this application, a greater holding capacity, in the case of

emulsion-type meat based product, is also attributed to the presence of a greater amount of extracted salt-soluble meat proteins, generated by the fine comminution process. To the contrary, the mincing, i.e., the coarse comminution, does not maximize the extracted amounts of salt-soluble meat proteins. Combining Domazakis and Doerr et al. would still not teach a person of ordinary skill on the combined effect of dietary fiber and starch on the stability of a minced meat-based system, comprising both feta cheese pieces and oil. Moreover, none of the references teaches a person of ordinary skill regarding the order of addition of these two ingredients. Specifically, dietary fiber is first mixed with meat, thus providing a suitable matrix for the subsequent addition of breadcrumbs (i.e. starch), oil and seasoning.

In reply to the argument of the Examiner that “regarding addition of plant fibers, it is noted that plant proteins and plant materials, such as, spices, as taught by Domazakis, typically include some cellulosic fiber,” the present Applicant needs to stress that both plant proteins and plant fibers, potentially present in spices or seasonings, are found in such small amounts, and even in trace amounts, that they do not justify any functionality attributes, with respect to stability or textural characteristics.

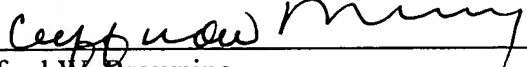
Regarding Mally, Applicant considers that this reference would only be relevant if the Applicant were attempting to claim novelty of the “extruder system,” or any assembling system to be used in the manufacturing of proteinaceous patties with fillings. The goal of the present application, closely related with the technological challenge faced, is by no means dealt with in Mally.

Drexel, on the other hand, teaches the production of a product for use as cooked and smoked sausage by adding cream cheese (having a different texture to feta cheese) to comminuted mixture of pork shoulder, nitrite pickle and ice, all this followed by the addition of

spray-dried skimmed milk powder (i.e., a strong emulsifier) and various seasonings. First of all, there is no indication that the process followed in Drexel preserves the cheese particles intact. Being a cream cheese, the latter should be rather homogenized in the meat mass, in a manner that the different phases of the cream cheese would be rather difficult to identify. Moreover, Applicant could not identify in the given abstract and short description, any indication of i) the use of oil; in specific olive oil, ii) the use of polysaccharides coming from two different sources, in specific dietary fiber and breadcrumbs; and iii) the specific order of addition of the components in (ii). Applicant believes that upon reading and studying all references brought forward, a person of ordinary skills would clearly fail to develop the resulting methods and product of the present application.

For all these foregoing reasons, Applicant respectfully requests entry of the foregoing claim amendments, reconsideration of the present application in light thereof and in light of the foregoing remarks, followed by an allowance of all pending claims 6-10 and 12 over all the prior art of record.

Respectfully submitted,

By:   
Clifford W. Browning  
Reg. No. 32,201  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204  
Telephone: (317) 238-6203  
Facsimile: (317) 636-1507  
E-mail: [cbrowning@kdlegal.com](mailto:cbrowning@kdlegal.com)